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County of Santa Clara
18CV336010
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5 Attorneys for Plaintiff
Safe Products for Californians, LLC
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10
11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV336010
12 LLC,)
13 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
14 vs.) **AND INJUNCTIVE RELIEF**
15 AMAZON.COM, INC.; DOES 1 THROUGH) (Health & Safety Code § 25249.5, *et seq.*)
16 150)
17 Defendants.)
18)
19)

20 Plaintiff, SAFE PRODUCTS FOR CALIFORNIANS, LLC (“Plaintiff”), alleges as
21 follows:

22 **SUMMARY**

23 1. This is a representative action brought by Plaintiff in the public interest of the
24 citizens of the State of California to enforce the public’s right to be informed of the health
25 hazards caused by exposures to cadmium and lead and lead compounds, toxic chemicals found
26 in and on the products manufactured, distributed, and/or sold by Defendants, AMAZON.COM,
27 INC., and DOES 1 THROUGH 150, inclusive (collectively “Defendants”), as set forth below.

28 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to

1 warn individuals not covered by California's Occupational Safety Health Act, Labor Code
2 § 6300, *et seq.* ("OSHA"), who purchase, use, or handle Defendants' products, about the risks
3 of exposure to cadmium and lead and lead compounds present in and on the products
4 manufactured, distributed, and sold throughout the State of California. Individuals not covered
5 by OSHA who purchase, use, or handle Defendants' products are referred to hereinafter as
6 "Consumers."

7 3. Detectable levels of cadmium and lead and lead compounds are found in and/or
8 on the powdered dietary supplements that Defendants manufacture, distribute, and/or offer for
9 sale to Consumers throughout the State of California.

10 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
11 Health & Safety Code § 25249.5, *et seq.* ("Proposition 65"), "[n]o person in the course of
12 doing business shall knowingly and intentionally expose any individual to a chemical known to
13 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual ..." Health & Safety Code § 25249.6.

15 5. Pursuant to Proposition 65, on October 1, 1987, California identified and listed
16 cadmium as a chemical known to cause cancer. Cadmium became subject to the "clear and
17 reasonable warning" requirements of Proposition 65 one year later on October 1, 1988. Cal.
18 Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

19 6. Pursuant to Proposition 65, on May 1, 1997, California identified and listed
20 cadmium as a chemical known to cause reproductive toxicity. Cadmium became subject to the
21 "clear and reasonable warning" requirements of Proposition 65 one year later on May 1, 1998.
22 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

23 7. Pursuant to Proposition 65, on October 1, 1992, California identified and listed
24 lead and lead compounds as a chemical known to cause cancer. Lead and lead compounds
25 became subject to the "clear and reasonable warning" requirements of Proposition 65 one year
26 later on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

27 8. Pursuant to Proposition 65, on February 27, 1987, California identified and
28 listed lead and lead compounds as a chemical known to cause reproductive toxicity. Lead and

1 lead compounds became subject to the “clear and reasonable warning” requirements of
2 Proposition 65 one year later on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health
3 & Safety Code § 25249.8.

4 9. Defendants manufacture, distribute, import, sell, and offer for sale without
5 health warnings in the State of California, powdered dietary supplements that contain excessive
6 levels of cadmium and lead and lead compounds including, but not limited to, “Kiva Moringa
7 Powder,” ASIN #X000TNNOVB; “Kiva Cacao Powder,” ASIN #X000IHOZ39; and “Kiva
8 Maca Powder,” ASIN #X000JAA76T. All such products containing cadmium and lead and
9 lead compounds are referred to collectively hereinafter as “Products.”

10 10. Defendants’ failure to warn Consumers in the State of California of the health
11 hazards associated with exposures to cadmium and lead and lead compounds in conjunction
12 with Defendants’ sales of the Products are violations of Proposition 65, and subject
13 Defendants, and each of them, to enjoinder of such conduct as well as civil penalties for each
14 violation. Health & Safety Code § 25249.7(a) & (b)(1).

15 11. For Defendants’ violations of Proposition 65, Plaintiff seeks preliminary and
16 permanent injunctive relief to compel Defendants to provide Consumers of the Products with
17 the required warning regarding the health hazards associated with exposures to cadmium and
18 lead and lead compounds. Health & Safety Code § 25249.7(a).

19 12. Pursuant to Health & Safety Code § 25249.7(b), Plaintiff also seeks civil
20 penalties against Defendants for their violations of Proposition 65.

21 JURISDICTION AND VENUE

22 13. The California Superior Court has jurisdiction over this action pursuant to
23 California Constitution Article VI, section 10, which grants the Superior Court “original
24 jurisdiction in all cases except those given by statute to other trial courts.” The statute under
25 which this action is brought does not specify any other basis of subject matter jurisdiction.

26 14. The California Superior Court has jurisdiction over Defendants based on
27 Plaintiff’s information and good faith belief that Defendants are each a person, firm,
28 corporation, or association that is a citizen of the State of California, has sufficient minimum

1 contacts in the State of California, and/or purposefully avails itself of the California market.
2 Defendants' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 15. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to
5 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
6 jurisdiction, because Plaintiff seeks civil penalties against Defendants, because one or more
7 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
8 Defendants conducted, and continue to conduct, business in Santa Clara County with respect to
9 the Products.

10 PARTIES

11 16. Plaintiff is a limited liability California company with its principal place of
12 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
13 eliminate the presence of hazardous substances in consumer products sold in California, and to
14 ensure that California consumers are aware of the presence of such substances in consumer
15 goods so that they can make an educated effort to limit their own exposure where deemed
16 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
17 § 25249.7(d).

18 17. Defendants AMAZON.COM, INC. are persons in the course of doing business
19 within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

20 18. Defendants manufacture, import, distribute, sell, and/or offer the Products for
21 sale or use in the State of California, or imply by their conduct that they manufacture, import,
22 distribute, sell, and/or offer the Products for sale or use in the State of California.

23 19. Defendants DOES 1 THROUGH 50, inclusive ("Manufacturer Defendants"),
24 are each a person in the course of doing business within the meaning of Health & Safety Code
25 §§ 25249.6 and 25249.11.

26 20. Manufacturer Defendants, and each of them, research, test, design, assemble,
27 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
28 assembles, fabricates, and manufactures, one or more of the Products offered for sale or use in

1 California.

2 21. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
3 are each a person in the course of doing business within the meaning of Health & Safety Code
4 §§ 25249.6 and 25249.11.

5 22. Distributor Defendants, and each of them, distribute, exchange, transfer,
6 process, and transport one or more of the Products to individuals, businesses, or retailers for
7 sale or use in the State of California, or each implies by its conduct that it distributes,
8 exchanges, transfers, processes, and transports one or more of the Products to individuals,
9 businesses, or retailers for sale or use in the State of California.

10 23. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
11 each a person in the course of doing business within the meaning of Health & Safety Code
12 §§ 25249.6 and 25249.11.

13 24. Retailer Defendants, and each of them, offer the Products for sale to individuals
14 in the State of California.

15 25. At this time, the true names of Defendants DOES 1 THROUGH 150, inclusive,
16 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names
17 pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis
18 alleges, that each of the fictitiously named defendants is responsible for the acts and
19 occurrences alleged herein. When ascertained, their true names shall be reflected in an
20 amended complaint.

21 **FIRST CAUSE OF ACTION**

22 **Violation of Proposition 65**

23 26. Plaintiff re-pleads and incorporates by reference the allegations contained in
24 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

25 27. Plaintiff is informed and believes, and on that basis alleges, that each of the
26 Defendants employs ten or more persons.

27 28. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
28 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

3 29. Proposition 65 states, “[no] person in the course of doing business shall
4 knowingly and intentionally expose any individual to a chemical known to the state to cause
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such
6 individual ...” Health & Safety Code § 25249.6.

7 30. On May 25, 2018, Plaintiff served a sixty-day notice of violation, including the
8 attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
9 least one person with relevant and appropriate expertise who reviewed relevant data regarding
10 the alleged exposures to cadmium and lead and lead compounds and that counsel believed
11 there was meritorious and reasonable cause for a public action, on Defendant AMAZON.COM,
12 INC.; the California Attorney General’s Office, and the requisite public enforcement agencies,
13 alleging that, as a result of Defendants’ sales of the Products, Consumers in the State of
14 California are being exposed to cadmium and lead and lead compounds resulting from their
15 reasonably foreseeable use of the Products, without the Consumers first receiving a “clear and
16 reasonable warning” regarding the harms associated with exposures to cadmium and lead and
17 lead compounds, as required by Proposition 65.

18 31. Defendants manufacture, import, distribute, sell, and offer the Products for sale
19 or use in violation of Health & Safety Code § 25249.6, and Defendants’ violations have
20 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, Defendants’
21 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
22 future.

23 32. After receiving Plaintiff’s sixty-day notice of violation, and to Plaintiff’s best
24 information and belief, no public enforcement agency has commenced and diligently
25 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
26 violations that are the subject of Plaintiff’s notice of violation.

27 33. The Products that Defendants manufacture, import, distribute, sell, and offer for
28 sale or use in California cause exposures to cadmium and lead and lead compounds as a result

1 of the reasonably foreseeable use of the Products. Such exposures caused by Defendants and
2 endured by Consumers in California are not exempt from the “clear and reasonable” warning
3 requirements of Proposition 65, yet Defendants provide no clear and reasonable warning.

4 34. Defendants knew or should have known that the Products they manufacture,
5 import, distribute, sell, and offer for sale or use in California contain cadmium and lead and
6 lead compounds.

7 35. Cadmium and lead and lead compounds are present in or on the Products in
8 such a way as to expose Consumers through ingestion and/or inhalation during reasonably
9 foreseeable use.

10 36. The normal and reasonably foreseeable use of the Products has caused, and
11 continues to cause, consumer exposures to cadmium and lead and lead compounds, as defined
12 by title 27 of the California Code of Regulations, section 25602(b).

13 37. Defendants know that the normal and reasonably foreseeable use of the
14 Products exposes individuals to cadmium and lead and lead compounds through ingestion
15 and/or inhalation.

16 38. Defendants intend that exposures to cadmium and lead and lead compounds
17 through the reasonably foreseeable use of the Products will occur by their deliberate, non-
18 accidental participation in the manufacture, importation, distribution, sale, and offering of the
19 Products for sale or use to Consumers in California.

20 39. Defendants failed to provide a “clear and reasonable warning” to those
21 Consumers in California who have been, or will be, exposed to cadmium and lead and lead
22 compounds through ingestion and/or inhalation resulting from their use of the Products.

23 40. Contrary to the express policy and statutory prohibition of Proposition 65
24 enacted directly by California voters, consumers exposed to cadmium and lead and lead
25 compounds through ingestion and/or inhalation as a result of their use of the Products that
26 Defendants sold without a “clear and reasonable” health hazard warning have suffered, and
27 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy
28 at law.

1 41. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-
2 described acts, Defendants, and each of them, are liable for a maximum civil penalty of \$2,500
3 per day for each violation.

4 42. As a consequence of the above-described acts, Health & Safety Code
5 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
6 Defendants.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 9 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to
10 Health & Safety Code § 25249.7(b);
- 11 2. Preliminary and permanent injunctions mandating that Defendants recall all
12 Products currently in the chain of commerce in California without a “clear and
13 reasonable warning” as defined by California Code of Regulations title 27,
14 section 25601, *et seq.*;
- 15 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily
16 and permanently enjoin Defendants from manufacturing, distributing, or
17 offering the Products for sale or use in California without first providing a
18 “clear and reasonable warning” in accordance with title 27 of the California
19 Code of Regulations, section 25601, *et seq.*, regarding the harms associated with
20 cadmium and lead and lead compounds;
- 21 4. Plaintiff’s reasonable attorney’s fees and costs of suit; and
- 22 5. For such other and further relief as the Court deems proper.

23 Dated: 08/4/18

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